

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GEORGE PANOKE,)	CIVIL NO. 05-00432 JMS-KSC
)	
Plaintiff,)	REPORT OF SPECIAL MASTER ON
)	PLAINTIFF'S OBJECTIONS TO
vs.)	BILL OF COSTS
)	
U.S. ARMY MILITARY POLICE)	
BRIGADE, HAWAII; FRANCIS)	
J. HARVEY, Secretary,)	
Department of the Army,)	
)	
Defendants.)	
_____)	

REPORT OF SPECIAL MASTER ON
PLAINTIFF'S OBJECTIONS TO BILL OF COSTS

Before the Court, pursuant to a designation by United States District Judge J. Michael Seabright, is Plaintiff George Panoke's ("Plaintiff") Objections to Bill of Costs ("Objections"), filed October 29, 2007. Defendants U.S. Army Military Police Brigade ("MPB") and Francis J. Harvey ("Harvey") (collectively "Defendants") filed their Bill of Costs on October 18, 2007. Pursuant to Rule 7.2(d) of the Local Rules of Practice of the United States District Court for the District of Hawaii ("Local Rules"), the Court finds

this matter suitable for disposition without a hearing. After reviewing the parties' submissions, the Court FINDS and RECOMMENDS that Plaintiff's Objections be DENIED. The Court recommends that the district court tax costs against Plaintiff in the amount of \$1,035.45.

DISCUSSION

As the prevailing parties in this action,¹ Defendants request costs totaling \$1,040.25 pursuant to 28 U.S.C. § 1920, Rule 54(d) of the Federal Rules of Civil Procedure, and Local Rule 54.2. Specifically, Defendants seek taxation of the following costs: (1) \$718.35 for fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case and (2) \$321.90 for fees for exemplification and copies of papers necessarily obtained for use in the case. See Bill of Costs ("BOC"); Mem. in Supp. of BOC at 2-5.

¹ On September 21, 2007, Judge Seabright issued an Order Granting Defendants' Motion to Dismiss and/or for Summary Judgment and Denying Plaintiff's Motion to Supplement the Record. On the same day, the Court entered final judgment in Defendants' favor.

I. Entitlement to Costs

Rule 54(d)(1) of the Federal Rules of Civil Procedure provides that "costs other than attorneys' fees shall be allowed as of course to the prevailing party unless the court otherwise directs." Fed. R. Civ. P. 54(d)(1). Courts have discretion to award costs pursuant to Rule 54(d). See Yasui v. Maui Electric Co., Ltd., 78 F. Supp. 2d 1124, 1126 (D. Haw. 1999). The burden is on the losing party to demonstrate why costs should not be awarded. Stanley v. Univ. of Southern California, 178 F.3d 1069, 1079 (9th Cir. 1999).

The Ninth Circuit has held that in determining whether to award costs to a prevailing party, district courts may consider the financial resources of the losing party; misconduct on the part of the prevailing party; the importance and complexity of the issues; the merit of the plaintiff's case, even if the plaintiff loses; and the chilling effect on future civil rights litigants of imposing high costs. Save Our Valley v. Sound Transit, 335 F.3d 932, 945 (9th Cir. 2003).

Plaintiff argues that the Court should exercise its discretion in this case and either decline to award costs or reduce the costs requested. Plaintiff asks the Court to consider his limited financial resources, the chilling effect on future civil rights litigants, and the merits of his case.

In considering the factors set forth in Save Our Valley, the Court finds that the present circumstances do not warrant a denial of costs. First, Plaintiff would not be rendered indigent by the \$1,040.25 that Defendants seek in costs. Indeed, Plaintiff admits that he is not indigent, but argues that he has a negative credit rating; a TV cable bill (which is currently in dispute) from another state where he has never resided; tens of thousands of dollars in attorneys' fees and costs; and a modest income working part-time for a private security company.

While the Court acknowledges that Plaintiff has financial obligations, they are not sufficient or significant enough to overcome the presumption in favor

of taxing costs. The bulk of Plaintiff's current debt appears to stem from the litigation of this case. Plaintiff elected to initiate this action so the resulting fees cannot serve as a reason to excuse him from paying costs to Defendant, which, in this case, are rather minimal.

Second, the Court does not believe that the imposition of costs will have a chilling effect on future litigants. Again, even if the Court assesses costs in full, \$1,040.25 is a relatively small sum, and will not likely deter persons of modest means from pursuing civil rights claims. Finally, in assessing the merits of Plaintiff's claims, the Court finds that although Plaintiff's case may have arguably had some merit, this is not a sufficient basis to defeat the presumption in favor of taxing costs to the prevailing party. Accordingly, the Court will tax costs in favor of Defendants.

II. Calculation of Taxable Costs

While courts have discretion to award costs pursuant to Rule 54(d), courts may only tax the costs

specified in 28 U.S.C. § 1920. See Yasui, 78 F. Supp. 2d at 1126 (citing Alflex Corp. v. Underwriters Laboratories, Inc., 914 F.2d 175, 177 (9th Cir. 1990); Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 441-42 (1987)). Section 1920 enumerates the following costs:

- (1) Fees of the clerk and marshal;
- (2) Fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case;
- (3) Fees and disbursements for printing and witnesses;
- (4) Fees for exemplification and copies of papers necessarily obtained for use in the case;
- (5) Docket fees under section 1923 of the title;
- (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title.

28 U.S.C. § 1920; Yasui, 78 F. Supp. 2d at 1126. The Court addresses each of the costs requested by Defendants in turn.

A. Court Reporter Costs

Plaintiff objects to Defendants' request for

court reporter/transcript costs as unnecessary in light of the sworn testimony of the administrative record. The Court is unpersuaded. Defendants request \$718.35 relating to costs for the transcript of Plaintiff's deposition. Section 1920(2) provides for the taxation of the "[f]ees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case." 28 U.S.C. § 1920(2). Defendants submitted an invoice for this expense. Ex. A to BOC. Insofar as Defendants seek reimbursement for Plaintiff's deposition, this Court finds that the transcript was necessarily obtained for use in the case and the costs associated therewith are taxable in full. Accordingly, the Court FINDS that \$718.35 in deposition costs is taxable.

B. Copying Costs

Plaintiff does not specifically object to the copying costs sought by Defendants. Defendants request taxation of in-house copying costs, totaling \$321.90.²

² In reviewing Defendants' calculations, the Court
(continued...)

They provided an itemized listing of copies made for the pleadings and other documents related to the litigation, as well as the number of pages copied for each. Mem. in Supp. of BOC at 2-5. Section 1920(4) explicitly provides for the taxation of copying costs.

Local Rule 54.2(f)4 further specifies that:

The cost of copies necessarily obtained for use in the case is taxable provided the party seeking recovery submits an affidavit describing the documents copied, the number of pages copied, the cost per page, and the use of or intended purpose for the items copied. The practice of this court is to allow taxation of copies at \$.15 per page or the actual cost charged by commercial copiers, provided such charges are reasonable. The cost of copies obtained for the use and/or convenience of the party seeking recovery and its counsel is not allowable.

Local Rule 54.2(f)4. Defendants indicate that the per

²(...continued)
discovered two errors. For both Defendants' First Request for Answers to Interrogatories and Production of Documents (7/17/07) and Defendants' First Response to Plaintiff's Second Request for Answers to Interrogatories and Requests for the Production of Documents (8/16/07), Defendants indicated that one copy was made. Yet the total amount for those documents reflected a calculation based on two copies. The Court will base its calculation on one copy. The copying costs therefore total \$317.10.

page copying cost was \$0.15. As set forth in Local Rule 54.2(f)4, this charge is reasonable. Further, upon review of the documents copied, the Court finds that they were necessarily obtained for use in the case. The Court therefore FINDS that a total of \$317.10 in copying costs is taxable.

CONCLUSION

In accordance with the foregoing, this Court, acting as Special Master, FINDS and RECOMMENDS that Plaintiff's Objections to Bill of Costs, filed October 29, 2007, be DENIED and that the district court tax costs against Plaintiff in the amount of \$1,035.45.

IT IS SO FOUND AND RECOMMENDED.

DATED: Honolulu, Hawaii, October 31, 2007.




Kevin S.C. Chang
United States Magistrate Judge

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